IN THE UNITED STATES DISTRICT COURT
FOR MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

NAMESAFE, INC.	)	
	)	
Plaintiff,	)	**Civil Action No. 3 08 0632**
	)	
v.	)	**Judge Echols**
	)	**Magistrate Judge Knowles**
LIFELOCK, INC.	)	
	)	**JURY TRIAL DEMANDED**
Defendant.	)	
	)	
	)	

DEFENDANT LIFELOCK, INC.'S ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIMS

For its Answer to the Amended Complaint for Trademark Infringement (the "Amended Complaint") filed by Plaintiff Namesafe, Inc. ("Namesafe"), Defendant Lifelock, Inc. ("Lifelock") responds, paragraph by paragraph as follows:

1. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 1 of the Amended Complaint, and therefore denies the allegations.

2. Admitted.

3. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Amended Complaint, and therefore denies the allegations.

4. Lifelock admits that Plaintiff's Amended Complaint is for trademark infringement and other related causes of action, and admits that some sponsored advertisements generated by the keyword "namesafe" were directed to Lifelock's website, but denies the remaining allegations of paragraph 4, as no agent or representative of Lifelock created, sponsord, or endorsed the advertisements. The complained-of advertisements were created by marketing

affiliates acting as independent contractors acting contrary to Lifelock's directives. Furthermore, Lifelock denies Namesafe's allegations that it has been damaged by the appearance of being affiliated with Lifelock due to other litigation where Lifelock is a party. To the contrary, Namesafe used Lifelock's fame to promote its own business and gain notoriety by filing the present lawsuit and issuing numerous press releases to publicize this lawsuit falsely accusing Lifelock of criminal activity.

5. Lifelock admits that jurisdiction is proper in this judicial district, but denies that it has committed acts of infringement in this judicial district.

6. Lifelock admits that venue is proper in this judicial district, but denies that it has committed acts of infringement in this judicial district.

7. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 7 of the Amended Complaint, and therefore denies the allegations.

8. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Amended Complaint, and therefore denies the allegations.

9. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 9 of the Amended Complaint, and therefore denies the allegations.

10. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 10 of the Amended Complaint, and therefore denies the allegations.

11. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 11 of the Amended Complaint, and therefore denies the allegations.

12. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 12 of the Amended Complaint, and therefore denies the allegations.

13. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 13 of the Amended Complaint, and therefore denies the allegations.

14. Lifelock admits that it provides identity theft prevention services and admits that it markets its services through various media including its website located at www.lifelock.com. Lifelock is without sufficient information to admit or deny the remaining allegations of Paragraph 14 of the Amended Complaint and therefore denies the allegations.

15. Lifelock denies the allegations of Paragraph 15 of the Amended Complaint.

16. Lifelock denies that it purchased and/or that it is its practice to purchase and/or use the NAMESAFE trademarks as “adwords” or “keywords.” Lifelock is without sufficient information to admit or deny the allegations as to the placement of Lifelock’s name, advertisements, or website address, or where these are displayed relative to Namesafe’s trademarks, as it is without knowledge as to the bids placed on the keywords in question, which would affect the order and frequency of such sponsored search results, and accordingly denies the same. Lifelock admits the remaining allegations of Paragraph 16 of the Amended Complaint to the extent that it provides an explanation of internet Keyword advertising in general.

17. Lifelock denies that it purchased and/or that it is its practice to purchase and/or use the NAMESAFE trademarks as “adwords” or “keywords.” Lifelock admits that, depending on the search terms used, certain search engines display “sponsored” ads in addition to organic (i.e., non-sponsored) search results that appear to the right of or on top of the organic search results. Lifelock denies that all sponsored ads achieve a position of superior display through the purchase of a keyword alone, and submits that other factors such as the bid amount also affect the position and frequency of an advertisement. Lifelock is without sufficient information to admit or deny the remaining allegations of Paragraph 17, and therefore denies the allegations.

18. Lifelock denies that it created the advertisements referenced in Paragraph 18 of the Amended Complaint. While Lifelock's investigation is ongoing, on information and belief, Lifelock believes that certain independent web marketing affiliates acting as independent contractors were responsible for the sponsored advertisements attached as Exhibit B to Plaintiff's Amended Complaint. The purchase of competitor trademarks as keywords for search engine marketing is contrary to the directives Lifelock has with its marketing affiliates. Lifelock has since contacted marketing affiliates thought to be associated with this activity and demanded that they immediately stop using "namesafe" or any combination thereof in their keyword advertising. To the best of Lifelock's knowledge, the affiliates have complied with this request, and there are currently no sponsored links generated from the term "namesafe" or that otherwise include the term "namesafe" that point to Lifelock's main website or a marketing affiliate's website. Lifelock is without sufficient information to admit or deny Plaintiff's allegation that the content of each advertisement is deceptive, and accordingly denies the same. As Plaintiff submitted printouts of screen shots as exhibits to its Amended Complaint without information as to the underlying website address link for each advertisement, Lifelock is without sufficient information to admit or deny that the advertisements were displayed with hyperlinks that "wrongfully and deceptively directed to Lifelock's www.lifelock.com website." However, Lifelock admits that some marketing affiliates are capable of creating advertisements that link directly to Lifelock's website located at www.lifelock.com, and further asserts that by looking at the website address after clicking on such an advertisement, it can be determined whether the advertisement was generated by a marketing affiliate or by Lifelock. Lifelock is without sufficient information to admit or deny the remaining allegations of Paragraph 18, and therefore denies the allegations.

19. Lifelock incorporates by reference the allegations contained in Paragraphs 1 through 18 above.

20. Lifelock denies that it purchased the keywords as alleged by Plaintiff, and therefore denies that it used in commerce WWW.NAMESAFE.COM, NAMESAFE, and/or NAMESAFE.COM, or any of Namesafe's trademarks. Lifelock is without sufficient information to admit or deny the remaining allegations contained in Paragraph 20 of the Amended Complaint, and therefore denies the allegations.

21. Lifelock denies the allegations set forth in Paragraph 21 of the Amended Complaint.

22. Lifelock denies the allegations set forth in Paragraph 22 of the Amended Complaint.

23. Lifelock denies the allegations set forth in Paragraph 23 of the Amended Complaint.

24. Lifelock denies the allegations set forth in Paragraph 24 of the Amended Complaint.

25. Lifelock incorporates by reference the allegations contained in Paragraphs 1 through 24 above.

26. Lifelock denies the allegations set forth in Paragraph 26 of the Amended Complaint.

27. Lifelock denies the allegations set forth in Paragraph 27 of the Amended Complaint.

28. Lifelock denies the allegations set forth in Paragraph 28 of the Amended Complaint.

29. Lifelock denies the allegations set forth in Paragraph 29 of the Amended Complaint.

30. Lifelock denies the allegations set forth in Paragraph 30 of the Amended Complaint.

31. Lifelock incorporates by reference the allegations contained in Paragraphs 1 through 31 above.

32. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 32 of the Amended Complaint, and therefore denies the allegations.

33. Lifelock denies the allegations set forth in Paragraph 33 of the Amended Complaint.

34. Lifelock denies the allegations set forth in Paragraph 34 of the Amended Complaint

35. Lifelock denies the allegations set forth in Paragraph 35 of the Amended Complaint.

36. Lifelock denies the allegations set forth in Paragraph 36 of the Amended Complaint.

37. Lifelock incorporates by reference the allegations contained in Paragraphs 1 through 36 above.

38. Lifelock denies the allegations set forth in Paragraph 38 of the Amended Complaint.

39. Lifelock denies the allegations set forth in Paragraph 39 of the Amended Complaint.

40. Lifelock denies the allegations set forth in Paragraph 40 of the Amended Complaint.

41. Lifelock denies the allegations set forth in Paragraph 29 of the Amended Complaint.

42. Lifelock denies the allegations set forth in Paragraph 42 of the Amended Complaint.

43. Lifelock incorporates by reference the allegations contained in Paragraphs 1 through 42 above.

44. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 44 of the Amended Complaint, and therefore denies the allegations.

45. Lifelock is without sufficient information to admit or deny the allegations contained in Paragraph 45 of the Amended Complaint, and therefore denies the allegations.

46. Lifelock denies the allegations set forth in Paragraph 46 of the Amended Complaint.

47. Lifelock denies the allegations set forth in Paragraph 47 of the Amended Complaint.

48. Lifelock denies the allegations set forth in Paragraph 48 of the Amended Complaint.

49. Lifelock incorporates by reference the allegations contained in Paragraphs 1 through 48 above.

50. Lifelock denies the allegations set forth in Paragraph 50 of the Amended Complaint.

51. Lifelock denies the allegations set forth in Paragraph 51 of the Amended Complaint.

52. Lifelock denies the allegations set forth in Paragraph 52 of the Amended Complaint.

AFFIRMATIVE DEFENSES

53. Plaintiff's complaint fails to properly plead or state sufficient grounds upon which relief can be granted against Defendant.

54. Namesafe's claims are barred by the doctrine of unclean hands.

COUNTERCLAIMS

FACTUAL BACKGROUND

55. Lifelock, Inc. ("Lifelock") is a Delaware corporation with its principal place of business at 60 E. Rio Salado Parkway, Tempe, Arizona 85281. Lifelock was incorporated on April 12, 2005. (Defendant's Exhibit 1, (hereinafter abbreviated as "Def.'s Ex. __ .") Corporate Entity Details from Delaware Secretary of State, obtained from Secretary of State website located at https://sos-res.state.de.us/tin/controller.)

56. Lifelock is the owner of U.S. Service Mark Registration No. 3,346,847 for the word LIFELOCK for use in connection with "providing consultation to third parties in the field of prevention of data theft and identity theft, and prevention of unsolicited commercial electronic mail, namely removal from junk mail lists and offers for pre-approved credit." Lifelock has been using the LIFELOCK mark continuously in interstate commerce since May 1, 2005. (Def.'s Ex. 2., U.S. Service Mark Registration No. 3,346,847.)

57. Lifelock is an industry leader in the field of identity theft prevention, and has spent significant time and resources marketing its services through television, radio, print, and internet advertising since it first started offering its services in May, 2005

58. By contrast, on information and belief Namesafe is a startup company that has been in business less than a year and has very little recognition among consumers or within the identity theft prevention industry. Namesafe was incorporated in Tennessee on September 14, 2007. (Def.'s Ex. 3, Corporate Entity Details from Tennessee Secretary of State, obtained from Secretary of State website located at http://www.tennesseeanytime.org/soscorp/details.jsp.)

59. On information and belief, Namesafe filed U.S. Trademark Application No. 77/285,184 for the mark NAMESAFE on September 20, 2007 as an intent-to-use trademark application for use in connection with "investigation and surveillance services related to identity theft, namely, personal information and financial identity monitoring; providing advice and consultation in the field of data theft and identity theft; providing fraud detection services for electronic funds transfer, credit and debit card, and electronic check transactions via a global computer network; financial identity monitoring, namely, obtaining, monitoring and analyzing financial credit information and other public and personal financial information for use in providing reports on risk of identity." The application is presently pending and is not yet registered. A third party has filed an extension of time to oppose this application, and this third party may believe that it has superior rights to the mark NAMESAFE. (Def.'s Ex. 4, TARR Status information for U.S. Trademark Application No. 77/285,184, obtained from www.uspto.gov.)

60. Namesafe first used the domain name for its corporate website located at www.namesafe.com on February 25, 2008. (Def.'s Ex. 5, Plaintiff's Exhibit B to the Complaint, state registration for www.namesafe.com.)

61. On June 25, 2008, Namesafe filed the present lawsuit in the United States District Court for the Middle District of Tennessee. Prior to this date, Lifelock had not been contacted by Namesafe and had not heard of Namesafe.

62. After filing the present lawsuit, Namesafe issued a press release that was widely distributed in various publications, including but not limited to Boston.com (The Boston Globe Online), Briebart.com, Denverpost.com (The Denver Post Online), SunHerald.com (Covering South Mississippi), and FoxBusiness.com (FoxNews.com.)

63. Namesafe's press release reads as follows:

NAMESAFE Sues LifeLock for Attempt to Steal NAMESAFE Corporate Identity

NASHVILLE, Tenn. – On Wednesday, attorneys for NAMESAFE filed a Federal Complaint in the Middle District of Tennessee against identity theft protection company LifeLock asserting that LifeLock and its CEO Todd Davis attempted to steal the trademark and deceptively divert traffic from search engine users intending to go to NAMESAFE.com. The suit alleges various violations of Trademark Laws and the Tennessee Consumer Protection Act, as well as other causes of action, asserting that LifeLock has attempted to lead unsuspecting consumers who may have intended to go to Namesafe.com to LifeLock.com instead.

"We have discovered that LifeLock has been sponsoring advertisements on most major search engines including (among others) Google, Yahoo, Lycos, MSN, Dogpile, and AOL, that deceptively led consumers to Lifelock.com. Specifically, when you searched 'Namesafe.com' in any major search engine, you found an advertisement that said 'Namesafe.com' but when you clicked on it, you were not directed to the official site for NAMESAFE (http://www.namesafe.com/), but rather to our competitor, LifeLock.com," said NAMESAFE founder and CEO David Ridings. "It is one of the most bizarre attempts to steal a company brand and its costumers [sic] that I have personally seen. Ironically enough, we consider it a form of 'corporate identity theft' from a company that is in the business of protecting identities, and we really could not tolerate it. Having said that, we expect it will stop today."

The suit filed Wednesday, June 25, 2008, seeks statutory damages and attorney fees, as well as injunctive relief for the wrongful use of the NAMESAFE brand, and the deceptive/misleading advertising practices.

About NAMESAFE

Founded by former police officer and attorney David Ridings, NAMESAFE gives consumers an innovative option for total protection against what proves to be the fastest growing crime in America. Not only do they protect clients from becoming victims of identity theft, they will also provide legal support across the nation to assist clients in the prosecution of anyone captured as a result of the fraud alerts they set -- a benefit not offered by any other company in this industry.

(Def.'s Ex. 6, Copies of press releases distributed by Namesafe to various news organizations and copies of articles from CNET and Wired regarding lawsuit.) Namesafe's lawsuit was also the topic of articles on other widely-read Internet news outlets such as CNET and Wired. (Id.)

64. Namesafe immediately used the litigation as a springboard to disseminate the aforementioned statements concerning Lifelock to the press and public. These statements include:

- The claim in the *headline* that "NAMESAFE Sues LifeLock for Attempt to Steal NAMESAFE Corporate Identity;"
- A claim that Lifelock attempted to "steal the [NAMESAFE] trademark;" and
- That the CEO of Namesafe, David Ridings, considers "it [to be] one of the most bizarre attempts to steal a company brand and its customers that I have personally seen. Ironically enough, we consider it a form of 'corporate identity theft' from a company that is in the business of protecting identities, and we really could not tolerate it."

(See Def.'s Ex. 6, copies of press releases distributed by Namesafe to various news organizations.)

65. Namesafe's press releases following the filing of the present lawsuit are untruthful and disparaging in that they falsely accuse Lifelock of engaging in "identity theft," a criminal activity which Lifelock is in the business of preventing. The alleged use of another company's name for purposes of an internet "keyword" search – which Lifelock denies having done – is not identity theft, a criminal act in which an individual's vital personal information, such as his or her driver's license, social security number and/or credit card numbers are pilfered in order to, among other things, make fraudulent purchases under the guise of the victim's identity. Further,

the press release focuses significantly on Namesafe's services and serve to advertise and promote these services.

66. On information and belief, Namesafe, as a startup identity theft prevention company with little consumer or industry recognition, filed the present lawsuit against Lifelock primarily for the purpose of generating publicity for its own services while disparaging the services of Lifelock.

FIRST COUNTERCLAIM
(Federal Unfair Competition Under Lanham Act § 43(a), 15 U.S.C. § 1125(a))

67. Lifelock incorporates the allegations and averments of paragraphs 1 through 66 above as though fully set forth in this paragraph.

68. Namesafe's use in commerce in commercial advertising or promotion of its services of false or misleading descriptions and misrepresentations of fact regarding the commercial activities of Lifelock is in violation of 15 U.S.C. § 1125(a).

69. As a direct and proximate result of Namesafe's willful and deliberate conduct, Lifelock has suffered and will continue to suffer, substantial injuries, loss, and damage to its business and goodwill in an amount to be proved at trial.

70. If Namesafe is permitted to continue its willful and deliberate acts of unfair competition, Lifelock will be irreparably harmed. Monetary damages alone cannot compensate Lifelock for the harm that Namesafe will cause to Lifelock. Lifelock is entitled to preliminary and permanent injunctive relief prohibiting Namesafe from making false or misleading misrepresentations of fact regarding the commercial activities of Lifelock.

SECOND COUNTERCLAIM
(Common Law Unfair Competition)

71. Lifelock incorporates the allegations and averments of paragraphs 1 through 70 above the same as fully set forth in this paragraph.

72. Namesafe's activities complained of herein, including the issuance of bad faith communications to the press and public, constitute unfair and unlawful practices in violation of the common law of the State of Tennessee.

73. The foregoing actions of Namesafe were in bad faith, with malice and without justification or privilege.

74. As a direct and proximate result of the willful and deliberate conduct of Namesafe, Lifelock has suffered and will continue to suffer, substantial injuries, loss, and damages to its business and goodwill in an amount to be proven at trial.

75. If Namesafe is permitted to continue its willful and deliberate acts of unfair competition, including Namesafe's use in commerce in commercial advertising or promotion of its services of false or misleading descriptions and misrepresentations of fact regarding the commercial activities of Lifelock, as well as trading off of the goodwill in Lifelock's name to market its own services, Lifelock will be irreparably harmed. Monetary damages alone cannot compensate Lifelock for the harm that Namesafe will cause to Lifelock. Lifelock is entitled to injunctive relief prohibiting Namesafe from making false or misleading misrepresentations of fact regarding the commercial activities of Lifelock.

THIRD COUNTERCLAIM
(Injurious Falsehood – Trade Libel)

76. Lifelock incorporates the allegations and averments of paragraphs 1 through 75 above as though fully set forth in this paragraph.

77. Namesafe filed its claim in bad faith and for improper purposes. Namesafe immediately used the litigation as a springboard to disseminate and publish untruthful and disparaging statements concerning Lifelock to the press and public. These statements include:

- The claim in the *headline* that "NAMESAFE Sues LifeLock for Attempt to Steal NAMESAFE Corporate Identity;"
- The claim that Lifelock attempted to "steal the [NAMESAFE] trademark;"and
- That the CEO of Namesafe, David Ridings, considers "it [to be] one of the most bizarre attempts to steal a company brand and its customers that I have personally seen. Ironically enough, we consider it a form of 'corporate identity theft' from a company that is in the business of protecting identities, and we really could not tolerate it."

Namesafe's press releases following the filing of the present lawsuit are untruthful and disparaging in that they falsely accuse Lifelock of engaging in "identity theft," a criminal activity that Lifelock is in the business of preventing. Further, in addition to the libelous statements, the press releases are also used to market Namesafe's services.

78. These statements were made with an intent to harm Lifelock, and Namesafe either recognizes or should have recognized that they were likely to do so. Furthermore, Namesafe made these statements with knowledge of their falsity or reckless disregard of their truth or falsity.

79. Prior to filing suit against Lifelock, Namesafe did not contact LifeLock regarding Lifelock's alleged purchases of "Namesafe" or "Namesafe.com" to determine whether the advertisements included in Exhibit A to Namesafe's complaint were created by or sponsored by Lifelock through a cease and desist letter or other means.

80. Namesafe has not taken action against other identity protection providers that are still using the keyword "namesafe" to generate sponsored links on search engines. (See Def.'s Ex. 7, copies of select search engine results pages.)

81. Namesafe's failure to contact Lifelock before filing suit, filing of the lawsuit in bad faith for the purpose of issuing press releases disparaging Lifelock and marketing Namesafe's services through the use of Lifelock's LIFELOCK trademark further illustrate Namesafe's intent to generate publicity for its own services while disparaging Lifelock.

82. Namesafe's conduct as alleged above has damaged and will continue to damage Lifelock's goodwill and reputation and has resulted in losses to Lifelock in an amount that is unknown at the present time.

FOURTH COUNTERCLAIM
(Tennessee Consumer Protection Act, § 47-18-101, *et seq.*)

83. Lifelock incorporates the allegations and averments of paragraphs 1 through 82 above as though fully set forth in this paragraph.

84. Namesafe's acts constitute unfair or deceptive trade practices in violation of the Tennessee Consumer Protection Act, Tenn. Code. Ann. § 47-18-101, *et. seq.*

85. Namesafe's acts violate numerous provisions of the Tennessee Consumer Protection Act, including, but not limited to, disparaging the goods, services or business of another by false or misleading representations of fact.

86. Namesafe's acts are and were willful and knowing, thus entitling Lifelock to all available remedies pursuant to the Tennessee Consumer Protection Act, including without limitation, injunctive relief, damages, multiple damages, attorneys' fees, costs, pre-judgment interest, and post-judgment interest.

WHEREFORE, Defendant Lifelock prays this Court:

A. Dismiss the Complaint with prejudice and deny all relief sought by Plaintiff;

B. Enter a judgment against Plaintiff/Counterclaim Defendant Namesafe that it has competed unfairly with Lifelock pursuant to federal, state, and common law;

C. To order that Plaintiff/Counterclaim Defendant Namesafe pay Lifelock's damages and attorneys' fees; and

D. To grant such other and further relief that this Court deems just.

Respectfully submitted,

LEWIS, KING, KRIEG & WALDROP, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2008, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the court's electronic filing system.

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